

**CHARTER TOWNSHIP OF MERIDIAN
ZONING BOARD OF APPEALS REGULAR MEETING MINUTES *APPROVED*
5151 MARSH ROAD, OKEMOS, MI 48864-1198
(517) 853-4000
WEDNESDAY, OCTOBER 14, 2020 6:30 PM
TOWN HALL ROOM**

PRESENT: Chair Mansour, Members, Hendrickson, Kulhanek, Wisinski, Brian Shorkey
(Alternate)

ABSENT: Member Field-Foster

STAFF: Director of Community Planning and Development Mark Kieselbach, Associate
Planner Keith Chapman

1. CALL MEETING TO ORDER

Chair Mansour called the meeting to order at 6:30 p.m.

2. APPROVAL OF AGENDA

MEMBER HENDRICKSON MOVED TO APPROVE THE AGENDA AS SUBMITTED.

SECONDED BY MEMBER WISINSKI.

VOICE VOTE: Motion carried unanimously.

3. CORRECTIONS, APPROVAL & RATIFICATION OF MINUTES

A. September 23, 2020 Meeting Minutes

MEMBER WISINSKI MOVED TO APPROVE THE MINUTES FROM WEDNESDAY, SEPTEMBER 23,
2020 AS SUBMITTED.

SECONDED BY CHAIR MANSOUR

VOICE VOTE: Motion carried unanimously.

4. COMMUNICATIONS

A. Ryan Fry, RE: ZBA #20-10-14-1

B. Amna & Shafait Kahn, RE: ZBA 20-10-14-2

C. Steve & Debbie Steinaker, RE: ZBA 20-10-14-2

5. UNFINISHED BUSINESS

None

6. NEW BUSINESS

A. ZBA CASE NO. 20-10-14-1 (Fink), 239 West Reynolds Road, Haslett, MI 48840

LOCATION: 5965 Marsh Road

PARCEL ID: 10-205-019-205-028 & 10-205-029

ZONING DISTRICT: C-1 (Commercial)

The applicant is requesting a variance from the following section of the Code of Ordinances:

- Section 86-756(10) - Adjoining a residential district. Where a parking area with a capacity of less than 50 vehicles, or its associated internal access or service drives, adjoins a residential district, a landscaped buffer, at least 20 feet wide, shall be provided between the parking area and the adjoining property and a vertical screen shall be erected consisting of a masonry wall, plant materials, a landscaped earth berm, or a combination thereof, as appropriate for the site, no less than four feet in height. Where a parking area with a capacity of 50 or more vehicles, or its associated internal access or service drives, adjoins a residential district, a landscaped buffer, at least 40 feet wide, shall be provided between the parking area and the adjoining property and a vertical screen shall be erected consisting of a masonry wall, plant materials, a landscaped earth berm, or a combination thereof, as appropriate for the site, no less than four feet in height.

The applicant has requested a variance to construct a parking lot located at 5965 Marsh Road.

Assistant Planner Chapman outlined the case for discussion. He stated the wrong section from the Code of Ordinances had been listed on the agenda. The correction section is Section 86-403(b)(3) which requires a setback of 50 feet from a residential district, except a setback of 35 feet is allowed when screening of a double row of interlocking trees is provided.

Chair Mansour asked the applicant or the applicant's representative if they would like to address the Zoning Board of Appeals (ZBA).

Alan Russell, 1690 Mack Avenue, Haslett, representing the applicant stated the change in zoning from commercial to residential also changed the setback requirement which resulted in the variance request. The applicant is trying to contain parking on the site but with the re-opening of the business on the south side of Lake Lansing Road, the overflow parking agreement is no longer available. The proposed request will keep vehicles in the main parking area and off the side street, Martinus.

Assistant Planner Chapman acknowledged the communication in support from Ryan Fry, 5975 Marsh Road, Haslett.

Member Wisinski asked staff what the setback requirement for the parking lot.

Director Kieselbach replied the setback is 50 feet. The C-1 zoning allows for a reduction to 35 feet if there is a double row of interlocking landscaping. The project has not been through site plan review which would include a landscape plan.

Chair Mansour asked if the applicant submitted a site plan with screening, would the variance be for 20 feet.

Director Kieselbach replied yes.

Chair Mansour asked the applicant if the request was for 35 feet or the 25 feet with the screening requirement.

Mr. Russell replied the intent was to include landscaping.

Member Sharkey asked what the landscaping requirements would be without a variance.

Director Kieselbach replied in the C-1 Zoning District requirement is a double row of interlocking trees that provides a solid screening. In the parking standard, the requirement is for a three foot high planting of shrubs or bushes.

Member Hendrickson asked Mr. Fink how long he had owned the property.

Mark Fink, 6150 Columbia Street, replied he had owned the property for 15 years.

Member Hendrickson asked Mr. Fink what properties he owned in the area.

Mr. Fink replied four properties on Marsh Road (5965, 5969 5971 ad 5973).

Member Hendrickson asked if he owned the three parcels staff had recommended be combined.

Mr. Fink replied yes.

Member Hendrickson asked Mr. Fink if he had received notice of the rezoning for the properties to the north from commercial to residential in 2019.

Mr. Fink replied he had received the notice.

Member Hendrickson asked Mr. Fink if he was present for the Planning Commission public hearing for the rezoning.

Mr. Fink replied he was not present at the public hearing.

Member Hendrickson stated he did not believe a commercial property abutting a residential property was a unique circumstance. This owner has owned the site for 15 years and there have been residential homes adjacent to it. The Township initiated the rezoning to correct an existing nonconforming situation. He asked Mr. Fink if the business could operate without the additional parking spaces at this time.

Mr. Fink replied yes, he could operate without the additional parking spaces. The business has grown and without the parking agreement with the adjacent business owner has created a parking issue.

Member Hendrickson stated there are not unique circumstances in this case which address review criteria one. With respect to review criteria two, he agreed the situation was not self-created. He questioned if practical difficulties existed that would prevent the owner from using the property for its permitted purpose as it had been used for a restaurant and has for over 15 years.

Member Sharkey stated the property owner did receive a previous variance allowing for less parking. This variance request would move parking closer to compliance with the Zoning Ordinance.

Member Hendrickson stated he appreciates the neighbor's support but it could not be taken into consideration because variance stays with the property and the ZBA needs to consider future neighbors.

Member Wisinski asked staff if the dimension of the parking spaces are per the requirement of the Zoning Ordinance.

Director Kieselbach replied 10 feet by 18 feet or 9 feet by 20 feet is an acceptable size for a parking space.

Chair Mansour asked the applicant where the patrons park when the parking lot is full.

Mr. Fink replied the patrons' park along Martinus Street in front of the residential homes. He had received complaints from residents and would like to eliminate those complaints and keep the parking contained on the property.

Chair Mansour confirmed with the applicant the overflow parking is on the neighboring street and the parking agreement with the neighboring business is no longer in effect.

Mr. Fink replied yes.

Chair Mansour stated because of those issues, there is practical difficulties. She asked the applicant how late the restaurant was open.

Mr. Fink replied the restaurant was open until 2:00 am.

Member Hendrickson asked if it is unique to have a commercial business on a street to adjacent residential.

Director Kieselbach replied originally the C-1 Zoning District was called Neighborhood Service. The intent at that time was to have commercial uses adjacent to residential. The Neighborhood Services standards had smaller setbacks to adjacent to residential. The Township adopted C-1 zoning in early 2000 and it included the 50 foot setback to provide for additional buffering. It is not uncommon to see C-1 zoning adjacent to residential.

Member Shorkey stated the property to the north was rezoned by Township and is not the fault of the owner which makes it a unique circumstance.

Member Kulhanek stated he could support the argument for unique circumstance but there may not be practical difficulties.

Chair Mansour read review criteria one from Section 86-221 of the Code of Ordinances which states unique circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district. Chair Mansour stated a case could be made for both views.

Chair Mansour read review criteria two which states these special circumstances are not self-created. She stated the circumstances were not self-created.

Chair Mansour read review criteria three which states strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties. Chair Mansour stated a practical difficulty was having the patrons parking on the residential street.

Chair Mansour read review criteria four which states that the alleged practical difficulties which will result from a failure to grant the variance would unreasonably prevent the owner from using the property for a permitted purpose.

Member Wisinski stated the property could continue to function as a restaurant. She understood the need for additional parking and keeping the parking off the residential street. Five additional parking spaces could be added without the variance.

Mr. Russell stated there were currently 43 parking space. The request is to add 19 more parking spaces for a total of 62. The building occupancy allows for 105 people. The request is not out of line as the previous parking agreement is no longer available.

Chair Mansour asked Mr. Russell how the denial of the request would unreasonably prevent use of property.

Mr. Russell asked the ZBA to consider how the parking on the street impacts those property owners. The request would be in the public interest and also address public safety.

Member Wisinski read review criteria five which states granting the variance is the minimum action that will make possible the use of the land or structure in a manner which is not contrary to the public interest and which would carry out the spirit of this zoning ordinance, secure public safety, and provide substantial justice. Member Wisinski stated there was the ability to add parking spaces to the site.

Member Sharkey asked the applicant if the increase in parking was triggered by a change in the business.

Mr. Fink replied the business has gained in popularity and the parking issues have increase.

Mr. Petrow stated with the 50 foot setback, additional parking could not be provided.

Member Hendrickson referenced the site plan and asked what the boxed area north of main building was

Mr. Petrow stated it is an existing house owned by Mr. Fink.

Mr. Fink replied the house was used for office space, storage and extra freezer space.

Director Kieselbach stated the property is zoned C-1 and can be used for commercial purposes. The house is nonconforming because of the setback from Marsh Road.

Chair Mansour read review criteria six which states granting the variance will not adversely affect adjacent land or the essential character in the vicinity of the property. Chair Mansour stated this criteria had been met.

Chair Mansour read review criteria seven which states the conditions pertaining to the land or structure are not as general or recurrent in nature as to make the formulation of a general regulation for such conditions practicable. Chair Mansour stated this criteria had been met.

Chair Mansour read review criteria eight which states granting the variance will be generally consistent with public interest and the purposes and intent of this Chapter. Chair Mansour stated this criteria had been met

MEMBER HENDRICKSON MOVED TO DENY THE VARIANCE AS REQUESTED IN ZBA CASE NO. 20-10-14-1 FOR FAILURE TO MEET THE EIGHT REVIEW CRITERIA IN ORDER TO APPROVE THE VARIANCE.

SECONDED BY MEMBER WISINSKI.

Chair Mansour stated the variance request could not meet review criteria four, five and eight.

ROLE CALL TO VOTE:

YEAS: Members, Hendrickson, Wisinski, Shorkey, Kulhanek, Chair Mansour

NAYS: None

Motion carried: 5-0

B. ZBA CASE NO. 20-10-14-2 (Maniaci), 3957 Palomino Drive, East Lansing, MI, 48823

DESCRIPTION: Parcel north of 3690 Hulett Road
 TAX PARCEL: 32-400-014
 ZONING DISTRICT: RAA (Single Family, Low Density)

The applicant is requesting a variance from the following section of the Code of Ordinances:

- Section 86-565(1), No accessory building shall project into any front yard.

The applicant has requested a variance to allow an accessory building (garage) to project into the front yard located at a parcel north of 3690 Hulett Road.

Assistant Planner Chapman outlined the case for discussion, stated the ZBA had received one letter against the variance request (Amna & Shafait Khan, 2730 Loon Lane) and two letters supporting the variance request (Steve & Debbie Steinaker, 3690 Hulett Road and Bojan Durickovic, 3720 Hulett Road).

Chair Mansour asked the applicant or the applicant's representative if they would like to address the Zoning Board of Appeals (ZBA).

Chuck Maniaci, 3957 Palomino Drive, East Lansing, applicant stated he had requested a variance in 2017 to build a house on the parcel but the request was not approved. They have submitted for a building permit for a house but it is currently on hold pending the variance request. He indicated building the house would eliminate two of the nonconformance issues and believe it would benefit the community to have a house on the property. The Ingham County Road Department has granted a permit to retain the current driveway and install a new driveway for the proposed residence. The existing garage does shield the view of the

pole barn at the back of the property and they would like to keep both buildings on the parcel. The proposed house will meet the setback requirements.

Renee Maniaci, 3957 Palomino Drive, East Lansing, applicant stated they thought they would be able to keep the garage and have tried to meet the Township requirements. They would like to keep the garage and believed it was not necessary to demolish it.

Chair Mansour stated demolition of a viable building would be a unique circumstance.

Member Hendrickson asked staff if the garage structure was too close to the road which created the nonconformity.

Assistant Planner Chapman replied the garage did not meet the front yard setback from Hulett Road.

Member Hendrickson asked if the applicant owned the property in 2016 and had requested the land division in 2017.

Mr. Maniaci replied yes.

Member Hendrickson referred to the plot plan which showed a house with an attached garage. He asked the applicant if that was correct.

Mr. Maniaci replied the plan is to have a two car garage connected to the house.

Member Hendrickson stated he did not see anything unique about the property to require a garage to be set forward on the house with the exception the garage is existing. He did not believe the existing nonconforming garage was a unique enough circumstance to meet the review criteria. The proposed new house has an attached garage that will not project into the front yard, and the house has an attached garage that can be constructed without variances.

Mr. Maniaci stated he believed the intent was to prevent construction of a structure in front of a primary residence. In this case, there is an existing structure on the site. The Ingham County Road Department has approved the parcel for a second driveway.

Member Hendrickson agreed with the applicant's interpretation of the intent of ordinance but review criteria three requires strict interpretation of the ordinance to cause practical difficulties.

Chair Mansour read review criteria one from Section 86-221 of the Code of Ordinances which states unique circumstances exist that are peculiar to the land or structure that are not applicable to other land or structures in the same zoning district. Chair Mansour stated she believed there was unique circumstances because of the land division.

Member Hendrickson stated then the special circumstances were self-created because the owner applied for and received the land division.

Mr. Maniaci asked how many RAA zoned parcels have existing structures on them without a primary residence and if it was a common occurrence.

Director Kieselbach stated while the Zoning Ordinance does not allow it, it may have occurred on older sites.

Chair Mansour asked the applicant to address the issue of self-created circumstances.

Mr. Maniaci stated the land division created a parcel with two accessory structures on it without a primary resident. The applicant now wants to build a new home. The existing garage has been on the site for 60 years. One option was to tear down the garage in order to build the new house but chose not to.

Member Wisinski stated the ZBA needs to look at the request as it has been presented regardless of the land division. It was not self-created because the garage has been on the parcel for 60 years. Having land that was previously farmed in an urban area is unique in Meridian Township.

Chair Mansour stated the applicant was granted a land division. The two structures are nonconforming without a primary residence on the parcel. By building the primary residence, it will bring two of the nonconforming structures to meet one part of the Zoning Ordinance.

Chair Mansour read review criteria two which states these special circumstances are not self-created. Chair Mansour stated she believes this criteria has been met.

Chair Mansour read review criteria three which states strict interpretation and enforcement of the literal terms and provisions of this chapter would result in practical difficulties.

Member Shorkey stated the site is residentially zoned and the applicant is trying to build a residence on the parcel which is resulting in a practical difficulty. The land division created the nonconformity.

Member Hendrickson asked if the possibility of creating a nonconforming structure was taken into consideration when the land division occurred.

Director Kieselbach replied the land division requires a parcel to meet the minimum frontage and area requirements. If the land division meets those minimum requirements, it must be approved. The applicants were advised during the land division process that the land division could create a non-conformity. The land division does not mean any other zoning requirements or a building permit would be issued.

Member Hendrickson asked if the applicant was advised that the land division may result in the need for a variance.

Director Kieselbach confirmed the letter sent to the applicant for the land division stated this approval did not waive any section of the Zoning Ordinance or that a building permit would be issued.

Member Hendrickson stated he has concerns with the variance request meeting review criteria three and four. The applicant is able to use the property and could build a house that meets the Zoning Ordinance.

Mr. Maniaci stated it was unreasonable to prevent the owner from using the property for its permitted purpose and requiring a viable building be torn down.

Member Wisinski stated with the existing garage being on the parcel and not being able to build a residence on a residentially zoned parcel is a practical difficulty.

Chair Mansour read review criteria four which states that the alleged practical difficulties which will result from a failure to grant the variance would unreasonably prevent the owner from using the property for a permitted purpose.

Chair Mansour read reviewed criteria five which states granting the variance is the minimum action that will make possible the use of the land or structure in a manner which is not contrary to the public interest and which would carry out the spirit of this zoning ordinance, secure public safety, and provide substantial justice. She stated the applicant had been denied a previous variance request and had adjusted the plan so no additional variances were needed other than this variance for the existing garage.

Chair Mansour stated the case could be made that review criteria three and five have been met. The existing garage prevents the applicant from building a house because of the nonconformity which makes it unreasonable.

Member Hendrickson stated he does not think it is unreasonable that the applicant must conform to the Zoning Ordinance.

Chair Mansour stated the minimum action was to tear down garage but through it was reasonable.

Member Hendrickson stated the applicant could continue to use the parcel with two non-conforming structures. The applicant could build a residence but needs to bring the parcel into conformity with the Zoning Ordinance.

Member Kulhanek stated with respect to review criteria four and the proposed new residence with an attached two car garage plus the pole barn there would be an abundance of storage available without the garage and did not see how review criteria four could be met.

Chair Mansour stated review criteria four states the applicant must be unreasonably prevented from using the property for its permitted purpose.

Member Wisinski stated the existing garage is a practical difficulty that prevents the construction of the residence.

Member Kulhanek stated it may be a practical difficulty but failure to grant the variance would not unreasonably prevent the applicant from using the property for its permitted purpose.

Chair Mansour stated failure to grant variance in this case means the applicant could not build a residence on the parcel which unreasonably prevents the applicant from using the property.

Chair Mansour read review criteria six which states granting the variance will not adversely affect adjacent land or the essential character in the vicinity of the property. Chair Mansour stated it was a residential parcel and the request would not adversely affect adjacent land.

Chair Mansour read review criteria seven which states the conditions pertaining to the land or structure are not as general or recurrent in nature as to make the formulation of a general regulation for such conditions practicable. Chair Mansour stated this criteria had been met

Chair Mansour read review criteria eight which states granting the variance will be generally consistent with public interest and the purposes and intent of this Chapter. Chair Mansour stated this criteria had been met.

Member Hendrickson stated the applicant is asking to be allowed a variance to build a residence that would violate the intent of the Zoning Ordinance.

Member Wisinski stated she believed that tearing down an existing building and not allowing the parcel to be used for a residence creates a practical difficulty. Allowing the existing garage to be in front of the proposed house does not affect the intent of the Zoning Ordinance.

Member Hendrickson stated the Township has requirements the property meets the Zoning Ordinance and these are the same requirements everyone has to meet when building on a parcel.

MEMBER WISINSKI MOVED TO APPROVE ZBA CASE NO 20-10-14-2 (MANIACI).

SECONDED BY CHAIR MANSOUR

Member Hendrickson stated he did not believe the request meet all of the review criteria and wished the applicant the best.

Member Kulhanek stated he could not support the request because of review criteria four.

ROLE CALL TO VOTE:

YEAS: Members Shorkey, Wisinski, Chair Mansour

NAYS: Member Hendrickson, Kulhanek

Motion carried: 3-2

7. OTHER BUSINESS

None

8. PUBLIC REMARKS

Chair Mansour opened the floor for public remarks.

Mrs. Maniaci spoke in support the Watershed business in Haslett and their variance request.

Chair Mansour closed public remarks.

9. BOARD MEMBER COMMENTS

Member Wisinski stated Township meetings are allowed to continue with virtual meetings through January.

10. ADJOURNMENT

Meeting adjourned at 9:00 pm.

Respectfully Submitted.

Robin Faust, Administrative Assistant II